

**UNITED STATES DEPARTMENT OF COMMERCE****Patent and Trademark Office**Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/466,568 12/17/99 CRABTREE

G APV-316.16

025181 HM12/0213  
FOLEY, HOAG & ELIOT, LLP  
PATENT GROUP  
ONE POST OFFICE SQUARE  
BOSTON MA 02109

HM12/0213

EXAMINER

LOEB, B

ART UNIT	PAPER NUMBER
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1636

9

DATE MAILED:

02/13/01

Please find below and/or attached an Office communication concerning this application or proceeding.

**Commissioner of Patents and Trademarks**

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/466,568	CRABTREE ET AL.
	Examiner Bronwen M. Loeb	Art Unit 1636

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1,6,14,17,20-24,30-33,36-39,45 and 48 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) \_\_\_\_\_ is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claims 1, 6, 14, 17, 20-24, 30-33, 36-39, 45 and 48 are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. § 119

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

#### Attachment(s)

- |  |   |
|--|---|
| 15) <input type="checkbox"/> Notice of References Cited (PTO-892)                              | 18) <input checked="" type="checkbox"/> Interview Summary (PTO-413) Paper No(s). <u>8</u> . |
| 16) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)          | 19) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)                |
| 17) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____. | 20) <input type="checkbox"/> Other: _____   |

**DETAILED ACTION**

***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1, 6, 14, 17, 18, 20-23, 31, 36-39 and 45, drawn to a DNA construct encoding a chimeric protein, a cell, a DNA composition, a method using the DNA construct and a host organism, classified in class 435, subclasses 320.1, 325, 252.3, and 440 and class 514, subclass 44.
  - II. Claims 17, drawn to a chimeric protein, classified in class 530, subclass 350.
  - III. Claims 24, 30-33, 36, 38 and 39, drawn to a ligand, classified in class 260, subclass 1.
  - IV. Claim 48, drawn to a mammal, classified in class 800, subclass 8 and class 435, subclass 325.
2. The inventions are distinct, each from the other because of the following reasons: Inventions I, II, III and IV are distinct products from each other, having different chemical, biological, structural and functional distinctness from each other, and are not disclosed for use together.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter and different classification, restriction for examination purposes as indicated is proper.

4. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

5. A telephone call was made to Isabelle Clause on January 19, 2001 to request an oral election to the above restriction requirement, but did not result in an election being made.

### ***Conclusion***

Certain papers related to this application may be submitted to Art Unit 1636 by facsimile transmission. The faxing of such papers must conform with the notices published in the Official Gazette, 1156 OG 61 (November 16, 1993) and 1157 OG 94 (December 28, 1993) (see 37 C.F.R. § 1.6(d)). The official fax telephone numbers for the Group are (703) 308-4242 and (703) 305-3014. NOTE: If Applicant does submit a paper by fax, the original signed copy should be retained by applicant or applicant's representative. NO DUPLICATE COPIES SHOULD BE SUBMITTED so as to avoid the processing of duplicate papers in the Office.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bronwen M. Loeb whose telephone number is (703) 605-1197. The examiner can normally be reached on Monday through Friday, from 8:30 AM to 5:00 PM. A phone message left at this number will be responded to as soon as possible (usually no later than the next business day after receipt by the examiner).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dr. Richard Schwartz, can be reached on (703) 308-1133.

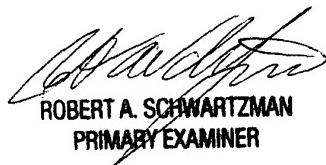
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Any inquiry of a general nature or relating to the status of this application should be directed to Dianiece Jacobs, Patent Analyst whose telephone number is (703) 305-3388.

Bronwen M. Loeb, Ph.D.  
Patent Examiner  
Art Unit 1636

February 5, 2001



ROBERT A. SCHWARTZMAN  
PRIMARY EXAMINER